

FEC Undermines the New Campaign Finance Law in Direct Contravention of the Statute's Language, Purpose and Legislative History

The centerpiece of the Bipartisan Campaign Reform Act of 2002 (BCRA) is a ban on soft money. The ban has three fundamental components:

- * Federal candidates and officeholders are prohibited from soliciting, directing, receiving or spending soft money;
- * National parties are prohibited from soliciting, directing, receiving or spending soft money; and
- * State parties are prohibited from spending unlimited soft money donations on activities affecting Federal elections.

The regulations adopted by the Federal Election Commission to implement the soft money ban undermine and compromise *all three* of these components of the law.

A bloc of four FEC Commissioners ignored the plain language of the law, the clear intent of Congress, the legislative history, and even the recommendations of the agency's own General Counsel and professional staff in adopting these regulations.

In short, four FEC Commissioners have put their personal views ahead of their responsibility to faithfully implement the will of Congress.

At the end of the rulemaking, Commissioner Scott Thomas, who consistently voted against the efforts to undermine and compromise the law, said, "**You have so tortured this law, it's beyond silly.**" Even the FEC's General Counsel said that some of the Commission's regulations "have the potential for great mischief."

FEC Regulations That Undermine the Ban on the Raising and Spending of Soft Money by Federal Candidates and Officeholders

- * By defining the terms "solicit" and "direct" extremely narrowly, and contrary to the language and intent of the law and the recommendation of the FEC General Counsel and professional staff, the Commission's regulations open the door to Federal candidates and officeholders continuing to raise soft money. This would reestablish the link between Federal officeholders and donors of unlimited soft money that the statute clearly severs.

The Commission rejected the definition proposed by its General Counsel that "to solicit" and "to direct" mean to "request, suggest or recommend" that a donation be made, and instead required that there be an explicit "ask" for a donation. The Commission's General Counsel said that "it doesn't take great cleverness" to figure out ways to request a donation without formally asking for one.

- * The Commission created what one Commissioner characterized as a "total carve out" from the new law's ban on soliciting soft money by Federal candidates and officeholders for any solicitation made by a Federal officeholder at a state party fundraising event. Nothing in the new law authorizes FEC Commissioners to establish a "total carve out"

from provisions of the statute. Nothing in the new statute permits Federal candidates and officeholders to raise unlimited soft money for state parties at state party fundraising events or in any other instance.

- * The Commission's regulations open the door to Federal officeholders continuing to use their "Leadership PACs" to raise and spend unlimited soft money, in direct contravention of the statute, its explicit purpose, and its legislative history.

The law clearly prevents Member Leadership PACs and any other entities "directly or indirectly established, financed, maintained or controlled" by Members of Congress from raising or spending unlimited soft money. The Commission's regulations interpret this statutory language to mean the same thing as the current affiliation rules, under which the FEC has treated Member Leadership PACs as "independent" from the Members. Such an interpretation would restore the soft money status quo for Member Leadership PACs.

- * The Commission's regulations allow national parties to set up shell operations between now and Election Day to carry on the raising and spending of soft money on behalf of the national parties after that date, when the new law takes effect. There is no basis in the statute for this provision.

This is an FEC invitation to evasion and cheating by the national parties. It opens the door for national parties to establish affiliated organizations during this election cycle and then claim that these same organizations are "independent" from the national parties after Election Day. These so-called "independent" organizations would be able to raise and spend soft money on ads supporting and attacking Federal candidates, just as the national parties do today. This is directly contrary to the new law, which prohibits any entity "directly or indirectly established, financed, maintained or controlled" by the national parties from raising and spending soft money and has no such "grandfather" clause. The Commission simply manufactured a grandfather clause where none existed in the statute.

- * The Commission's regulations define "solicit" and "direct" so narrowly that national parties, their leaders, and their agents, will be able to easily evade the ban on soft money solicitation by national parties.
- * The Commission's regulations allow state parties to continue to spend unlimited soft money donations on activities that affect Federal elections, in direct contravention of the statute's language and purpose. Much of the soft money that is currently spent to influence Federal elections is spent through the state parties, as a new study released yesterday documents.

The FEC, without any basis in law, defined get-out-the-vote activities as not including encouraging voters to vote, and voter identification activities as not including the acquisition of voter lists. The agency, without any statutory basis, also imposed its own artificial dates to broaden the time period for when state party get-out-the-vote and voter identification activities can be paid for with unlimited soft money. In both of these instances, the Commission rejected the recommendations of its own General Counsel and professional staff. The effect of these incorrect interpretations of the law will be to increase the ability for state parties to spend soft money to influence Federal elections.